

2. On the Petition Date, the Debtors filed a motion seeking authority to sell their assets and approve bidding procedures (Docket Nos. 17, the “Sale Motion”).

3. On May 22, 2023, the Court entered an order approving bidding procedures with respect to the Sale Motion (Docket No. 113, the “Bidding Procedures Order”).

4. On May 26, 2023, pursuant to the Bidding Procedures Order, the Debtors filed the *Notice of Executory Contracts and Unexpired Leases Which May Be Assumed and Assigned, Pursuant to Section 365 of the Bankruptcy Code, in Connection with the Sale of Substantially All of the Debtors Assets and the Proposed Cure Amounts With Respect Thereto* (Docket No. 141, the “Original Cure Notice”).

5. On June 2, 2023, pursuant to the Bidding Procedures Order, the Debtors filed the *Supplemental Notice of Executory Contracts and Unexpired Leases Which May be Assumed and Assigned, Pursuant to Section 365 of the Bankruptcy Code, in Connection with the Sale of Substantially all of the Debtors’ Assets and the Proposed Cure Amounts with Respect Thereto* (Docket No. 162, the “Supplemental Cure Notice,” together with the Original Cure Notice, the “Cure Notice”).

6. On May 22, 2023, the Debtors filed the *Debtors’ Emergency Motion Seeking Entry of an Order (I) Authorizing the Debtors to Maintain and Administer Their Existing Customer Programs and Honor Certain Prepetition Obligations Related Thereto, and (II) Granting Related Relief* (Docket No. 116, the “Customer Programs Motion”).

7. On May 23, 2023 the Court entered the *Order (I) Authorizing the Debtors to Maintain and Administer Their Existing Customer Programs and Honor Certain Prepetition Obligations Related Thereto, and (II) Granting Related Relief* (Docket No. 133, the “Customer Programs Order”).

8. The Cure Notice lists a number of agreements with Amerisource and its affiliates, including, but not limited to, AmerisourceBergen Drug Corporation, ASD Specialty Healthcare, Besse Medical, Oncology Supply, and AmerisourceBergen Global Manufacturer Services GmbH. Each of the agreements has a proposed cure amount of \$0.00.

9. Amerisource does business with the Debtors under distribution services agreements (collectively, the “DSA”) by purchasing product from the Debtors and distributing it to retailers and others. Under the DSA, Amerisource is entitled to certain claims and credits (the “DSA Credits”) including, but not limited to, prompt pay discounts, distribution fees, chargebacks, rejected inventory claims, inventory shortage claims, inventory price discrepancy claims, and returned product claims.

10. Certain of the DSA Credits arise and accrue from time to time and can take a considerable amount of time to discover, such as returns of product from the end-customer to Amerisource. Amerisource has continued to do business with the Debtors postpetition pursuant to the Debtors’ Customer Programs Order. The Customer Programs Order allows Amerisource to setoff the DSA Credits against amounts owed to the Debtors in the ordinary course of business pursuant to the terms of the DSA. At the current time, Amerisource has accounts payable that will become due to the Debtors than the known amounts of the DSA Credits. However, there may be significant amounts of DSA Credits that become due that are not yet known, such as returns of products or recalls, and the amounts of DSA Credits will continue to change as Amerisource and the Debtors continue to do business. Amerisource reserves the right to update the demanded cure amount as more information becomes available.

LIMITED OBJECTION

I. The Debtors Must Fully Cure All Obligations Under the Agreements Prior to Assumption and Assignment

11. Prior to assumption of the DSA, the Debtors are required by section 365(b)(1) of the Bankruptcy Code to cure all outstanding defaults under the Agreements and compensate Amerisource for any actual pecuniary loss, including the payment of related attorneys' fees. *See* 11 U.S.C. §365(b)(1)(B). Amerisource continues to do business with the Debtors and anticipates that the amount needed to satisfy the amounts due to Amerisource under the DSA will continue to change prior to the sale. Although the current known amounts result in a net amount that may become due to the Debtors from Amerisource, that balance may change prior to the sale. Additionally, to the extent that any assignee does not agree to honor the ongoing setoff and recoupment of amounts under the DSA regardless of when such amounts accrue, the full potential amount of the DSA Credits must be reserved by Amerisource prior to the sale. Furthermore, as part of Amerisource's pecuniary losses, it is entitled to attorneys' fees in connection with the Debtors' obligation to cure all monetary defaults under the DSA. Amerisource hereby reserves the right to amend the cure amount to reflect such additional amounts, which have not yet been billed or become due under the DSA.

II. The Debtors Must Provide Adequate Assurance of Future Performance

12. The Debtors must provide adequate assurance of future performance under the Agreements pursuant to Section 365(b)(1)(C) of the Bankruptcy Code. Amerisource requires that the Debtors and/or any potential assignee of the DSA provide evidence of the proposed assignees' ability to perform under the DSA.

13. Any assignee must demonstrate that it will be able to perform under the DSA and honor returns, chargebacks, rebates and any other credits to which Amerisource is entitled

regardless of whether those returns, chargebacks, rebates or other credits emanate from transactions that occurred pre-petition, post-petition, before the sale or subsequent to the sale.

WHEREFORE, Amerisource respectfully requests the entry of an order conditioning the assumption and assignment of the DSA on (i) the payment of all outstanding cure amounts prior to the sale, including additional amounts incurred subsequent to the filing of this objection and reservation of rights and (ii) providing Amerisource with adequate assurance of future performance with respect to the Agreements, together with such other and further relief as is just and proper.

Dated: June 7, 2023
Wilmington, Delaware

/s/ Michael W. Yurkewicz

Michael W. Yurkewicz, admitted *pro hac vice*
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